

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14982 of Wilma I. Butler, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing structure that will increase a nonconforming rear yard [Paragraph 2001.3(c)] and a variance from the rear yard requirements (Sub-section 404.1) for a proposed subdivision and addition to a nonconforming single-family dwelling in an R-2 District at premises 5374 Hayes Street, N.E., (Square 5208, Lots 30 and 31).

HEARING DATE: March 22, 1989
DECISION DATE: March 22, 1989 (Bench Decision)

FINDINGS OF FACT:

1. The site is located in the northwest quadrant of the intersection of Hayes Street and 54th Place, N.E. The subject site is located in an R-2 District and is known as premises 5374 Hayes Street, N.E.

2. The area surrounding the site is also zoned R-2, which permits one family, semi-detached dwellings. Square 5208 contains both residential and institutional uses. Burville Elementary School and playground make up approximately one-half of the square. Residential dwellings and a substantial amount of unimproved property constitute the remaining portion of square 5208.

3. The subject dwelling is a three-bedroom detached frame house built in 1923. The area of the site (both lots 30 and 31) is 4,728.53 square feet. There is a 12-foot alley in the square which is in close proximity to the site.

4. Two of the bedrooms in the house are 9' by 12'. There is, however, no closet space. One of the bedrooms is located on the rear of the house.

5. The kitchen is also located on the rear portion of the structure. The applicant testified that there are no usable cabinets or shelves for storing items used in the kitchen. There is a stove, a hot water tank and heater which take up practically the entire floor space. The sink

is located near the back door and the cabinet that is now in the kitchen obstructs this door. Because of the placement of these units in the kitchen, there is inadequate space for the installation of cabinets and shelving.

6. The applicant proposes to expand the kitchen and back bedroom by constructing an addition to the rear of the house. The house is presently nonconforming. The proposed addition, which is to be 10 feet wide and 23.5 feet long, will increase and extend the existing nonconformity. The addition will contain approximately 236 square feet of space. One-third of the addition has already been constructed. The applicant wishes to complete the structure.

7. The applicant is required to have a 20 foot rear yard. The applicant's rear yard is an average of 13 feet. A variance of 7 feet or 35 percent is being requested.

8. Aside from the proposed addition, there is presently another addition on the rear of the property. The existing structure and its enlargements conform to the lot occupancy and side yard requirements of the Zoning Regulations. The use and structure requirements will also be met.

9. Although the rear yard is an average of 13 feet, the proposed addition comes within two feet of the adjacent property at the easternmost corner of the structure. The irregular shape of this property makes it unique and creates a practical difficulty for the applicant.

10. The applicant testified that the width of the addition could be shortened by four feet on the corner near the abutting property.

11. The applicant's son testified in support of the application. He indicated that he is helping to plan the renovations in the applicant's home. He further indicated that the addition could be shortened by four feet as the applicant suggested.

12. The Office of Planning (OP), by memorandum dated March 15, 1989 and through testimony at the hearing, recommended approval of the application. The OP noted that the original structure, built in 1923, may have occupied only Lot 31. Subsequently, an addition, consisting of approximately 582 square feet, was made to the dwelling. It extended the structure onto the adjoining lot, Lot 30, making it nonconforming. The proposed addition, it was noted, will be the second major alteration to the existing structure.

13. It is the opinion of the Office of Planning that the subject property is irregular in shape. This

irregularity makes it difficult for the applicant to enlarge her dwelling and meet the requirements of the Zoning Regulations. The OP, therefore, concludes that the applicant is deprived of reasonable use of her property.

14. The Office of Planning indicates that the R-2 zone is for semi-detached units. The existing dwelling is detached. However, in OP's opinion, the use of the property substantially conforms to one of the purposes of the Zoning Regulations, which is to prevent the undue concentration of population and the overcrowding of land. The OP also notes the property's compliance with lot occupancy and structure requirements. It is the opinion of the OP that the variances can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the R-2 Zone District.

15. The OP points out that placing the addition within two-feet of the adjacent property could have a negative impact thereon. The Board agrees with the opinion and recommendation of the Office of Planning.

16. Advisory Neighborhood Commission (ANC) 7C, by letter dated March 10, 1989, indicated that it supports the application. The ANC did not appear to testify at the hearing.

17. Testimony was heard from owners of the property which abuts the subject site. They opposed the application because of the adverse affect the addition will have on their property. They indicated that part of their fence was removed by the applicant to accommodate the new addition. The applicant was apparently under the assumption that the fence was on her own property.

18. The adjacent property owners introduced into the record a survey plat which indicates that the applicant's structure encroaches upon the adjacent property.

19. The adjacent property owners wish to have the applicant move the addition back onto her property so that the property lines may be clearly defined. It is the Board's desire to prevent the addition from encroaching on the adjacent property.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking a variance to allow an addition to an existing nonconforming structure that will increase the nonconformity of the rear yard and a variance from the rear yard requirements for a

proposed subdivision and addition to a nonconforming single family dwelling in an R-2 Zoning District.

The granting of a variance requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition of the property so that the property cannot reasonably be used for the purpose for which it is zoned. The Board must further find that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps.

The Board concludes that the applicant has met the burden of proof. The Board concludes that the structure is a detached single-family dwelling, situated on property which is irregular in shape. The bedroom located on the rear of the structure does not contain a closet. The kitchen is without the necessary shelving and cabinets. Neither of the rooms contains sufficient space to expand. The Board is of the opinion that the property is unique, and without an addition, the needed expansion cannot be made to improve the living conditions of the dwelling. This creates a practical difficulty for the applicant and deprives her of reasonable use of her property as a dwelling.

The Board concludes that the addition presently encroaches upon the adjacent property at its easternmost corner. The applicant has agreed to limit the construction of the addition to the subject property by decreasing the width of the addition. The Board is of the opinion that this will limit the adverse affect on the adjacent property. The Board therefore concludes that the variances can be granted without substantial detriment to the public good.

The Board concludes that the house was built in 1923, predating the enactment of the Zoning Regulations in 1958. The Board further concludes that the dwelling conforms to lot occupancy and use and structure requirements as set forth in the Regulations. It is therefore the Board's conclusion that the variances can be granted without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps.

The Board concludes that it has given the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED, SUBJECT to the CONDITION that the new addition shall be set back at least one foot from the property line.

VOTE: 4-0 (John G. Parsons, Charles R. Norris, William F. McIntosh and Paula L. Jewell to grant; Carrie L. Thornhill not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: AUG 18 1989

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14982order/LJP51

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14982


As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated AUG 18 1989, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY
Executive Director

DATE: AUG 18 1989